

## **MINUTES OF JANUARY 26, 2015**

The regular meeting of the Sussex County Board of Adjustment was held on Monday, January 26, 2015, at 7:00 p.m. in the County Council Chambers, County Administrative Office Building, Georgetown, Delaware.

The meeting was called to order at 7:00 p.m. with Chairman Dale Callaway presiding. The Board members present were: Mr. Dale Callaway, Mr. John Mills, Mr. Brent Workman, Mr. Jeff Hudson, and Mr. Norman Rickard, with James Sharp – Assistant County Attorney, and staff members, Ms. Kelly Passwaters – Zoning Inspector, II and Mrs. Jennifer Norwood – Recording Secretary.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously to approve the Revised Agenda with Case No. 11504 – Loblolly, LLC under Old Business being moved to the beginning of the Agenda. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Hudson, and carried unanimously to approve the Minutes and Findings of Fact for November 17, 2014 as circulated. Motion carried 5 – 0.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously to approve the Minutes and Findings of Fact for December 1, 2014 as circulated. Motion carried 5 – 0.

### **OLD BUSINESS**

**Case No. 11504 – Loblolly, LLC** – west of Coastal Highway (Route One) and north of Route 5 (Union Street Extended) (911 Address: None Available) (Tax Map I.D. 2-35-7.00-43.00).

An application for a special use exception to place two (2) off-premise signs and for variances from the maximum square footage, height, side yard setback, and the minimum separation between off-premise signs requirements.

Mr. Sharp stated that he has learned of a conflict of interest and he advised the Board to direct their questions to Vince Robertson, Esquire. Mr. Robertson was not able to attend the meeting tonight but he will be available on February 2, 2015.

Motion by Mr. Mills, seconded by Mr. Rickard, and carried unanimously that the case be tabled until February 2, 2015. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

Mr. Sharp read a statement explaining how the Board of Adjustment meeting is conducted and the procedures for hearing the cases.

**PUBLIC HEARINGS**

**Case No. 11514 – John Battista and Joanne Battista** – south of Route 54 (Lighthouse Road) and being east of Cedar Road, a subdivision street, and also being Lot 18 of The Gates of Rumly Marsh Subdivision within Keen-wik (911 Address: 37771 Cedar Road, Selbyville, DE) (Tax Map I.D. 5-33-20.09-135.00)

An application for a variance from the side yard setback requirement.

Ms. Passwaters presented the case. John Battista and Joanne Battista were sworn in to testify about the Application. Raymond Tomasetti, Esquire, presented the case to the Board on behalf of the Applicants and submitted pictures for the Board to review.

Mr. Tomasetti stated that the Applicants are requesting a variance of 0.4 feet from the five (5) feet side yard setback requirement for an existing first floor deck; that the Applicants purchased the Property and built the dwelling in 1986; that the deck was constructed with the dwelling and completed in 1987; that the deck has since been replaced due to termite damage; that railings were added to the replacement deck for safety; that the Property is unique in shape and size; that the rear of the lot is wider than the front of the lot; that the dwelling had to be angled on the lot to accommodate the rear yard setback requirement; that the lot is very narrow in the front yard; that the Property cannot otherwise be developed without a variance; that the variance will enable reasonable use of the Property; that the lot is pie-shaped; that the deck has been in its current location for nearly 29 years; that the use will not impair the uses or development of neighboring or adjacent properties; that the neighboring properties have been developed and the existence of the deck has not posed a problem to that development; that the variance will not alter the character of the neighborhood; that the use will not be detrimental to the public welfare; that the variance represents the least modification of the regulation at issue; that the variance is the minimum variance necessary to afford relief; and that removal of the railing creates a safety issue.

Mr. Battista, under oath, confirmed the statements made by Mr. Tomasetti as being true and correct.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11514 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The shape of the Property as shown on the survey makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicants, since the Certificate of Compliance was issued by the Office of Planning and Zoning;

4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11515 – Laurie Bronstein** – northwest of Route 16 (Broadkill Road) and being located at the corner of South Bay Shore Drive and Madison Avenue and also being Lots 7 & 8 Block 4 within Old Broadkill Subdivision (911 Address: 307 South Bay Shore Drive, Milton, DE) (Tax Map I.D. 2-35-4.17-51.00)

An application for a variance from the maximum height requirement for a dwelling, front yard, and corner front yard setback requirement.

Ms. Passwaters presented the case. Laurie Bronstein was sworn in and testified requesting a variance of 17.6 feet from the thirty (30) feet front yard setback requirement for an existing dwelling and proposed addition and a variance of 8.7 feet from the fifteen (15) feet corner front yard setback requirement for an existing and proposed deck. Ms. Bronstein submitted exhibits to the Board to review. Ms. Bronstein testified that she is not seeking a height variance; that the proposed addition will not exceed the maximum height requirement; that the existing dwelling is fifty (50) years old and in need of major renovations; that the second floor of the dwelling is not usable on the sides; that the proposed second floor addition will keep the same footprint as the existing dwelling but will provide more usable space on that floor; that the dwelling and neighboring dwellings both sit close to the road; that many homes in the area violate the front yard setback requirements; that Madison Avenue is similar to a driveway and provides access to her neighbor; that the existing deck is irregularly shaped; that the existing deck is fourteen (14) feet wide at its widest point; that the proposed deck will be fourteen (14) feet wide throughout and will wrap around the rear of the house; that the proposed width of the deck will provide a more usable outdoor space; that a portion of the yard is a designated driveway to the neighbor's property; that an adjacent lot is used for three (3) septic systems that service her dwelling and two (2) of her neighbor's dwellings; that the renovations will bring the Property more into character with the neighborhood as there are nicer homes which have been constructed nearby and the renovation will bring the dwelling more in line with the development; that wetlands take up a portion of the Property; that a portion of the rear of her yard is used as an access easement for a neighboring property; that the Property cannot be developed in strict conformity without a variance; that she did not build the house or the decks; that the variance requested will allow the house to remain in its current location with additions made thereto and to allow the deck to be renovated so that it is fourteen (14) feet wide throughout rather than irregularly shaped as it is now; that the variances

will not impair the uses of the neighboring and adjacent properties; that two of the nearby lots have already been developed with homes; that the variances will not be detrimental to the public welfare; that the variances represent the least modifications of the regulations at issue; that the variances are the minimum variances to afford relief; that the footprint of the house is very narrow; that the width of the deck allows for more usable outdoor space; and that a significant portion of the yard is used as an access easement for a neighbor.

The Board found that one (1) party appeared in support of the Application.

The Board found that no parties appeared in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11515 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The non-conformity and size of the lot make the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11516 – Ted McBride** – west of Route 13 (Sussex Highway) approximately 1,910 feet south of Road 452 (West Snake Road) (911 Address: None Available) (Tax Map I.D. 5-32-13.00-63.07)

An application for a special use exception to place a manufactured home type structure for temporary use as an office.

Ms. Passwaters presented the case. Ted McBride was sworn in and testified requesting a special use exception to place a manufactured home type structure for temporary use as an office; that he works for Eastern Shore Tractor Company; that a Bobcat dealership will be located on the Property; that the Applicant plans to use a 24 feet by 60 feet manufactured home type structure for their temporary office until the construction of the new, state-of-the-art building for the dealership is completed; that the proposed unit will be a new model; that the Applicant plans to use the unit for two (2) years or less; that the unit will be removed when construction is completed; that there

are other commercial entities in the area; that the use will not substantially adversely affect the surrounding and neighboring properties; and that the Property is located along Route 13. Mr. McBride submitted a site plan for the Board to review.

The Board found that no parties appeared in support of or in opposition to the Application.

Ms. Passwaters stated that the Office of Planning and Zoning received one (1) letter in support of the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception Application No. 11516 for a period of two (2) years for the requested special use exception based on the record made at the public hearing since the use does not substantially affect adversely the uses of adjacent and neighboring properties.

Motion by Mr. Rickard, seconded by Mr. Mills, and carried unanimously that the special use exception be **granted for a period of two (2) years and for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, Mr. Mills – yea, and Mr. Callaway – yea.

**Case No. 11517 – Preston Automotive Group** – northeast of Coastal Highway (Route One) approximately 250 feet northwest of Melson Road at Midway Shopping Center (911 Address: 18489 Coastal Highway, Rehoboth Beach, DE) (Tax Map I.D. 3-34-6.00-86.00)

An application for a variance from the landscaping within the highway corridor overlay zone buffer requirement.

Mr. Sharp advised the Board that his firm has represented the Applicant in the past and that if the Board had any questions, they should direct them to Vince Robertson, Esquire.

Ms. Passwaters presented the case. Zachary Crouch and Dave Wilson were sworn in and testified requesting a variance from the landscaping within the highway corridor overlay zone buffer requirement.

Mr. Crouch testified that the Applicant has purchased the Boulevard Ford business and a vacant lot next to Wells Fargo along Route One; that the Highway Corridor Overlay Zone requires that a property owner provide a twenty (20) feet landscaping buffer; that the Applicant will be using the Property for inventory display; that the Applicant will not have traffic to this site; that the Applicant has received a letter of no objection from the Delaware Department of Transportation (“DelDOT”); there will not be direct access to Route One from this lot; that all traffic will use the existing rear yard access; that the landscape buffer would defeat the purpose of using the Property

for inventory as the buffer would block the view of inventory from the highway; that the variance is necessary to enable reasonable use of the Property; that the neighboring properties have little to no landscaping in the buffer requirement area; that only staff will drive automobiles to and from the inventory lot; that there will be no structures on this property; that there will be a Storm Water Management Pond on the Property; that the Applicant will maintain the twenty-five (25) feet setback requirement; that there will be no vehicles parked in the buffer zone; that the landscape buffer would create a hardship to the dealership because the cars cannot be seen otherwise; that a landscape buffer is out of character for the neighborhood; that the variance will not alter the character of the neighborhood; and that the variance is the minimum variance necessary to afford relief.

Mr. Wilson testified that the Applicant learned that the Applicant needs additional space for display of inventory; that there will be no direct access to the Property off of Route 1; that there will be no parking in the buffer zone; and that there are two businesses located between the Property and the dealership.

Mr. Crouch testified that there are only a few bushes in front of the neighboring businesses.

The Board found that no parties appeared in support of or in opposition to the Application.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11517 for the requested variance based on the record made at the public hearing and for the following reasons:

1. The use of the Property makes it unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood;
5. The variance sought is the minimum variance necessary to afford relief; and
6. The variance represents the least modification of the regulation at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variance be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

### **OLD BUSINESS**

**Case No. 11501 – James Ahern** – south of Route 54 (Lighthouse Road) and being east of Grant Avenue approximately 1,117 feet south of Lincoln Drive and being Lot 22 Block 6 within Cape

Windsor Subdivision (911 Address: 38827 Grant Avenue, Selbyville, DE) (Tax Map I.D. 5-33-20-18-56.00)

An application for variances from the side yard and rear yard setback requirements.

Ms. Passwaters presented the case, which has been tabled since December 15, 2014. Ms. Passwaters advised the Board that the garage is under 600 square feet as shown on the survey dated December 29, 2014, and is detached from the dwelling; and that no variance is needed for the garage since it is under 600 square feet.

The Board reviewed the revised survey the Applicant submitted per the Board's request and discussed the variances requested.

Mr. Rickard stated that he would move that the Board recommend approval of Variance Application No. 11501 for the requested variances based on the record made at the public hearing and for the following reasons:

1. The small lot size makes the Property unique;
2. The variances are necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variances will not alter the essential character of the neighborhood;
5. The variances sought are the minimum variances necessary to afford relief; and
6. The variances represent the least modifications of the regulations at issue.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the variances be **granted for the reasons stated**. Motion carried 5 – 0.

The vote by roll call; Mr. Mills – yea, Mr. Hudson – yea, Mr. Rickard – yea, Mr. Workman – yea, and Mr. Callaway – yea.

**Case No. 11506 – VRNS II, LLC** – at intersection southwest of DuPont Boulevard (U.S. Route 113) and northeast of Hany Road (Road 337) (911 Address: 28880 DuPont Boulevard, Millsboro, DE) (Tax Map I.D. 2-33-5.00-99.00)

An application for a special use exception to place an off-premise sign and a variance from the required separation requirement from a dwelling.

Ms. Passwaters presented the case, which has been tabled since January 5, 2015.

Ms. Passwaters stated to the Board that the signs on the Property were now in compliance with the zoning code.

Mr. Rickard stated that he would move that the Board recommend approval of Special Use Exception/Variance Application No. 11506 for the requested special use exception based on the record made at the public hearing because the use does not substantially affect adversely the uses of adjacent and neighboring properties and for the requested variance based on the record made at the public hearing and for the following reasons:

1. The location and surrounding area make this Property unique;
2. The variance is necessary to enable reasonable use of the Property;
3. The exceptional practical difficulty was not created by the Applicant;
4. The variance will not alter the essential character of the neighborhood; and
5. The variance sought is the minimum variances necessary to afford relief.

Motion by Mr. Rickard, seconded by Mr. Workman, and carried unanimously that the special use exception and the variance be **granted for the reasons stated**. Motion carried 5 – 0.

**Meeting Adjourned 8:32 p.m.**